

SECTION 247 OF THE TOWN AND COUNTRY PLANNING ACT 1990
PROPOSED STOPPING UP OF HIGHWAYS AT PRINCES PARADE, HYTHE

PRE-INQUIRY MEETING – POST MEETING NOTE

Introduction

I am Owen Woodward, the Planning Inspector appointed to hold the forthcoming Public Inquiry. This is my note of the Pre-Inquiry Meeting held on 21 September 2021 and the agreements made and actions set out. Please do reply if any clarifications or corrections are necessary.

Purpose and scope of the Inquiry

The Inquiry is in relation to a stopping-up order (the Order) that has been made by Folkestone and Hythe District Council (the Applicant) in relation to land at Princes Parade in Hythe. The Order is made under s247 of the TCPA 1990 (as amended). In more detail, the land that is to be stopped up comprises the two areas marked 1 and 2 on plan Ref NATTRAN/SE/S247/3254 and includes a car parking area, footpaths and highway verge. A length of Princes Parade is to be diverted, nearer the Royal Military Canal (RMC), and as depicted by area A on the same plan.

The order is pursuant to planning permission Ref Y17/1042/SH, granted on 18 July 2019, for a leisure centre and associates works, made in full, and a mixed residential and commercial development, made in outline.

Scope

The Order is made to the Secretary of State (SoS) and it is the SoS who will make the final decision as to whether or not the Order should be made. My role is to assist the SoS by considering all of the written and oral evidence, both for and against the proposed stopping up, and to submit a report and recommendation to the SoS. It is open to the SoS not to accept my recommendation if they have good reasons for making a decision contrary to that recommendation.

The Inquiry provides the opportunity for the Applicant's reasons and justification for the proposed stopping to be fully explored and tested; and for all of the key issues raised in the objections to the proposed Order to also be fully considered. Those opposing the Order should, however, note that it is not open to myself, or the SoS, to revisit the Council's decision to grant planning permission. Objections pursued at the Inquiry should, therefore, be clearly related to the proposed stopping up, and not to the development itself.

This was discussed at length at the meeting and I appreciate that the dividing line between the two is not always clear cut. My best direction is to remember that it is an Inquiry held in relation to s247 of the TCPA 1990, not s78 as is used for conventional appeals in relation to planning applications. I append to this note an extract from s247 to make it clear what the limitations are. It is the 'right' that is for discussion, not the construction. Therefore, surface water drainage, street lighting etc are not relevant considerations for the Inquiry.

Modification

It is possible for the Order to be modified, although if it is to be so, this would need to be fully justified and discussed and interrogated at the Inquiry.

It is not possible to re-visit or modify the original planning permission.

Representation and witnesses

It was confirmed at the meeting that the Applicant is represented by Richard Honey QC of Francis Taylor Building. They are to call various witnesses on transport/highways, ecology, heritage and planning.

The Save Princes Parade group (SPP) are the main objectors to the Order. They are represented by Clive Moys, of Radcliffe Chambers. They are to call various witnesses on highways/transport, planning, ecology, the setting of the RMC, heritage, and access for the disabled.

Although listed at the meeting, please can both main parties provide confirmation of their witness list, including qualifications, in writing.

There are several other objectors to the proposed Order, including Councillors for local Wards, Sandgate Parish Council, Hythe Civic Society, and many individuals. There are also supporters of the scheme from the local community.

Individuals who wish to speak at the Inquiry will need to confirm so in writing. They should also submit a written statement setting out what they wish to say. This should be in addition to any previously submitted letter of objection or support.

Main issues

That there is a valid planning permission and that the road in question is a public highway are not contested. The main issues for this Inquiry are therefore:

1. Is the closure of the highway necessary to implement the proposed development in accordance with the planning permission? i.e. the 'necessity' test.

This element of the evidence should focus on the permission and the physical and practical realities of its implementation. In this instance, I note that it is a hybrid permission, granted part-full/part-outline. This brings with it complications in terms of ensuring that any stopping-up relates to the relevant part of the permission, and that any considerations take due account of areas which are currently not fully defined and will be the subject of future reserved

matters and condition discharge submissions. I expect this to be carefully and fully picked up in the written submissions and at the Inquiry.

2. Whether the advantages to be conferred by making the Order would outweigh any disadvantages or loss likely to arise to the public as a result of the stopping up? i.e. the 'merit' test.

In this case, the key elements of the 'merit' test are:

- Effect on seafront parking;
- Effect on seafront highway amenity;
- Effect on disabled access to the seafront;
- Effect on the setting of the RMC, including from noise and air pollution;
- Effect on biodiversity; and,
- Effect on traffic, which can include consideration of flow of traffic.

Dealing with the main issues

It was agreed at the meeting to proceed with the standard format, which is as follows: (1) Applicant (2) Supporters (3) SPP and other objectors (4) Applicant to ask questions of SPP and other objectors.

Save Princes Parade will in general take the responsibility of asking questions of Applicant, although this can be allowed on a discretionary basis from other objectors.

I should note here that any interested persons taking part in the Inquiry will not be obliged to answer questions on their evidence. However, if they are prepared to do so this can allow greater weight to be given to that evidence, because it will have been tested in the Inquiry.

Inquiry format and programme

The Inquiry is scheduled to take place 19 - 22 October 2021 inclusive, at Leas Cliff Hall, The Leas, Folkestone CT20 2DZ. It will start at 10:00 on the first day, and 09:30 on all subsequent days. The aim will be to finish each day by 17:00.

It was agreed at the meeting that although four days might be sufficient to hear the evidence, this is unlikely to provide time to consider closings and the site visit. It was also noted that the week following is half-term. I have since been provided with the diaries of the two main parties and can confirm that we are all available 3 and 4 November 2021.

I therefore confirm with this note that the Inquiry is scheduled to run from 19 -22 October and 3 – 4 November 2021, with the 4 November being a reserve day and also to be set aside for the formal site visit.

If Covid restrictions render a physical event impossible then we will revert to a virtual event on the same dates, to be hosted by the Council. If this is necessary, then further information can be provided at the time.

I understand that in the case of a physical event, at least one person cannot attend in person. We are actively investigating options for how they might be

heard at the Inquiry, for example through video or phone link, and will follow up with further information on this.

The Inquiry will be live streamed, so that those who want to observe but not take part in the proceedings can do so without needing to be present in person.

Based on the discussions at the meeting, I set out below the draft programme and order of events:

- My Opening Announcements;
- Applicant's Opening Statement;
- SPP Opening Statement;
- Applicant evidence;
- Supporters evidence;
- SPP evidence;
- Objectors evidence;
- Applicant examination of SPP and objectors evidence;
- SPP closing submissions;
- Applicant closing submissions;
- Arrangements for Site Inspection; and
- Inquiry Close

I would be grateful for any comments the parties may have on the above. I also request timings for each of the stages/witnesses from the two main parties.

Within this timetable, I will be accommodating to individual supporters or objectors if they cannot attend at a specific time. I will also consider hosting one evening schedule if absolutely necessary but it is expected that individuals attend during normal Inquiry hours if at all possible.

Site visit

I will carry out an inspection of the site during the course of the Inquiry. A route plan and itinerary for the site inspection should be prepared and agreed between the main parties ahead of the Inquiry. We will also keep this under review during the course of the Inquiry, before being discussed and agreed before the Inquiry is closed.

Documents

Please see Annex B for guidance on the formatting of Proofs of Evidence.

A list of Core Documents to be used during the Inquiry is to be produced by the Applicant in consultation with SPP. This is to be finalised in advance of the exchange of evidence in order that the list can be referred to as appropriate within the proofs.

The Applicant is to rely on a document from May 2021 as its Statement of Case. SPP have already responded to this document but are to further update this.

Proofs of Evidence are to be exchanged. There will be no opportunity for rebuttal statements, as agreed at the meeting.

I will read all written objections and representations submitted in respect of the publication of the draft Order and those submitted in relation to the planning permission. These will be taken into account in the preparation of my report and recommendation. There is no requirement for objectors or other interested parties to submit further written information unless they wish to introduce new matters not covered in their original representation. Any significant addition should be set out in a supplementary written statement, so that both myself and the Applicant can see and understand these additional matters of concern before the commencement of the Inquiry.

Other

Caroline Williams is the Programme Officer for the Inquiry. Her contact details have previously been circulated. Caroline will take the lead role in the lead up to the Inquiry, liaising with parties and neighbours as appropriate, co-ordination of documents, and submissions, and of the Inquiry website.

An Inquiry website and a general update page have been set up and again this has been previously circulated. These will be kept up-to-date in the lead up to, and during, the Inquiry.

It was suggested at the meeting by Chris Farrell that the leisure centre be referred to as a 'swimming pool'. However, I will refer to this as a 'leisure centre' as set out in the description of development of the planning permission. I note that this does not confer a value judgement on the facility being offered, which I will judge on its own merits.

The Applicant confirmed that the relevant conditions from the planning permission are 4, 6, 9, 13, 30, 33, 40 and 42.

Key deadlines

Please find below a table listing the key deadlines leading up to the Inquiry in chronological order:

Item	Deadline	Party
Statement of Case	28 September 2021	SPP
Core Document List		Applicant
Comments on draft Inquiry programme, including witness lists, timings and availability		Both main parties
Proofs of Evidence	5 October 2021	Both main parties
Written objections and support		
Issue final Inquiry programme		Inspector
Written statements by appearances		
Final pre-Inquiry Core Document List	18 October 2021	Both main parties

I welcome any comments that any of the parties have on any of the above.

O S Woodward
INSPECTOR
27 September 2021

Annex A: s247 of TCPA 1990 (as amended) extract

Annex B: Content and Format of Proofs and Appendices

Annex C: The Applicant confirmed relevant conditions from the planning permission

Annex A



Town and Country Planning Act 1990

1990 CHAPTER 8

PART X

HIGHWAYS

Orders made by Secretary of State

247 Highways affected by development: orders by Secretary of State.

- (1) The Secretary of State may by order authorise the stopping up or diversion of any highway [^{F1}outside Greater London] if he is satisfied that it is necessary to do so in order to enable development to be carried out—
- (a) in accordance with planning permission granted under Part III [^{F2}or section 293A], or
 - (b) by a government department.

- (2) Such an order may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway [^{F3}outside Greater London].

[^{F4}(2A) The council of a London borough may by order authorise the stopping up or diversion of any highway within the borough, or within another London borough if the council of that borough consents, if it is satisfied that it is necessary to do so in order to enable development to be carried out—

- (a) in accordance with planning permission granted under Part III [^{F2}or section 293A], or
- (b) by a government department.

(2B) Such an order may make such provision as appears to the council to be necessary or expedient for the provision or improvement of any other highway within the borough.]

- (3) [^{F5}An order under subsection (1) or (2A)] may direct—

- (a) that any highway provided or improved by virtue of it shall for the purposes of the ^{M1}Highways Act 1980 be a highway maintainable at the public expense;

Changes to legislation: Town and Country Planning Act 1990, Section 247 is up to date with all changes known to be in force on or before 13 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) that the Secretary of State, [^{F6}a strategic highways company,] or any county council, [^{F7}county borough council,] metropolitan district council or London borough council specified in the order or, if it is so specified, the Common Council of the City of London, shall be the highway authority for that highway;
- (c) in the case of a highway for which the Secretary of State [^{F8}or a strategic highways company] is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Highways Act 1980.

[^{F9}(3A) An order under subsection (2A) may not provide that—

- (a) the Secretary of State,
[a strategic highways company,]
^{F10}(aa)
 - (b) Transport for London, or
 - (c) a London borough other than the one whose council is making the order,
- shall be the highway authority for a highway unless the Secretary of State, [^{F11}the strategic highways company,] Transport for London or the council, as the case may be, so consents.]
- (4) An order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State [^{F12}or the council of the London borough] to be necessary or expedient, including in particular—
 - (a) provision for authorising the Secretary of State [^{F12}or the council of the London borough], or requiring any other authority or person specified in the order—
 - (i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work; or
 - (ii) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section 1 or 2 of the ^{M2}Restriction of Ribbon Development Act 1935 in relation to any highway stopped up or diverted under the order;
 - (b) provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to which the order relates.
 - (5) An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment.
 - (6) The provisions of this section shall have effect without prejudice to—
 - (a) any power conferred on the Secretary of State [^{F13}or a London borough] by any other enactment to authorise the stopping up or diversion of a highway;
 - (b) the provisions of Part VI of the ^{M3}Acquisition of Land Act 1981; or
 - (c) the provisions of section 251(1).

Textual Amendments

- F1** Words in s. 247(1) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(2)** (with **Sch. 12 para. 9(1)**); **S.I. 2000/801**, art. 2(2)(c), **Sch. 1**

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- F2** Words in s. 247(1)(a)(2A)(a) inserted (7.6.2006) by The Planning and Compulsory Purchase Act 2004 (Commencement No. 9 and Consequential Provisions) Order 2006 (S.I. 2006/1281), **art. 5(b)**
- F3** Words in s. 247(2) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F4** S. 247(2A)(2B) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(4)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F5** Words in s. 247(3) substituted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(5)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F6** Words in s. 247(3)(b) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 104(2)(a)**; S.I. 2015/481, reg. 2(a)
- F7** Words in s. 247(3)(b) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 24(9)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F8** Words in s. 247(3)(c) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 104(2)(b)**; S.I. 2015/481, reg. 2(a)
- F9** S. 247(3A) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(6)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F10** S. 247(3A)(aa) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 104(3)(a)**; S.I. 2015/481, reg. 2(a)
- F11** Words in s. 247(3A) inserted (5.3.2015) by Infrastructure Act 2015 (c. 7), s. 57(1), **Sch. 1 para. 104(3)(b)**; S.I. 2015/481, reg. 2(a)
- F12** Words in s. 247(4) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(7)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**
- F13** Words in s. 247(6)(a) inserted (3.7.2000) by 1999 c. 29, s. 270, **Sch. 22 para. 3(8)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch.**

Marginal Citations

- M1** 1980 c. 66.
M2 1935 c. 67.
M3 1981 c. 67.

Changes to legislation:

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[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 69(1)(cza) inserted by [2015 c. 7 Sch. 4 para. 8\(2\)](#)
- s. 70(3A) inserted by [2017 c. 20 Sch. 3 para. 2](#)
- s. 75ZA and cross-heading inserted by [2016 c. 22 s. 155](#)
- s. 83(1A)-(1C) amendment to earlier affecting provision 2004 c. 5, s. 45(2) by [2011 c. 20 Sch. 8 para. 14\(4\)\(5\) Sch. 25 Pt. 16](#)
- s. 83(1A)-(1C) inserted by [2004 c. 5 s. 45\(2\)](#)
- s. 83(2)-(2B) amendment to earlier affecting provision 2004 c. 5, s. 45(3) by [2011 c. 20 Sch. 8 para. 14\(4\)\(5\) Sch. 25 Pt. 16](#)
- s. 83(2)-(2B) substituted for s. 83(2) by [2004 c. 5 s. 45\(3\)](#)
- s. 83(4) inserted by [2004 c. 5 s. 45\(4\)](#)
- s. 85(1A) inserted by [2004 c. 5 s. 45\(6\)](#)
- s. 93(5)(6) inserted by [2017 c. 20 Sch. 3 para. 6](#)
- s. 106ZA inserted by [2016 c. 22 s. 158\(1\)](#)
- s. 106ZB inserted by [2016 c. 22 s. 159\(1\)](#)
- s. 108(1A)(1B) inserted by [2015 c. 7 Sch. 4 para. 15\(4\)](#)
- s. 108(3A) inserted by [2004 c. 5 Sch. 6 para. 6](#)
- s. 108(3B)(ba) inserted by [2015 c. 7 Sch. 4 para. 15\(6\)](#)
- s. 108(3DA) inserted by [2015 c. 7 Sch. 4 para. 15\(7\)](#)
- s. 141(6) inserted by [2017 c. 20 Sch. 3 para. 7](#)
- s. 169(1)(a) words renumbered as s. 169(1)(a) by [2017 c. 20 s. 26\(5\)\(a\)](#)
- s. 169(1)(b) inserted by [2017 c. 20 s. 26\(5\)\(b\)](#)
- s. 170(8BA) inserted by [2017 c. 20 s. 26\(6\)](#)
- s. 196(1A) inserted by [2008 c. 29 Sch. 10 para. 8\(2\)](#)
- s. 208(5A) inserted by [2008 c. 29 Sch. 10 para. 9\(2\)](#)
- s. 303(10A) inserted by [2015 c. 7 Sch. 4 para. 19\(3\)](#)
- s. 303(12) inserted by [2015 c. 7 Sch. 4 para. 19\(4\)](#)
- s. 333(3ZB) inserted by [2016 c. 22 s. 159\(2\)](#)
- Sch. 4B para. 11(3)-(5) inserted by [2017 c. 20 s. 7](#)
- Sch. 7 para. 12(1)-(1C) amendment to earlier affecting provision 2004 c. 5 s. 45(9) by [2011 c. 20 Sch. 8 para. 14\(7\)](#)
- Sch. 7 para. 12(1)-(1C) substituted for Sch. 7 para. 12(1) by [2004 c. 5 s. 45\(9\)](#)
- Sch. 9A inserted by [2016 c. 22 Sch. 13](#)
- Sch. 13 para. 24A inserted by [2017 c. 20 s. 26\(7\)](#)

Annex B: Content and Format of Proofs and Appendices

Content

Proofs of evidence **should**:

- focus on the main issues identified, in particular on areas of disagreement;
- be proportionate to the number and complexity of issues and matters that the witness is addressing;
- be concise, precise, relevant and contain facts and expert opinion deriving from witnesses' own professional expertise and experience, and/or local knowledge;
- be prepared with a clear structure that identifies and addresses the main issues within the witness's field of knowledge and avoids repetition;
- focus on what is really necessary to make the case and avoid including unnecessary material, or duplicating material in other documents or another witness's evidence; and
- where data is referred to, include that data, and outline any relevant assessment methodology and the assumptions used to support the arguments (unless this material has been previously agreed and is included as part of the statement of common ground).

Proofs **should not**:

- duplicate information already included in other Inquiry material, such as the officer's report, decision notice, site description, planning history and the relevant planning policy; and
- recite the text of policies referred to elsewhere: the proofs need only identify the relevant policy numbers, with extracts being provided as core documents. Only policies which are needed to understand the argument being put forward and are fundamental to an appraisal of the proposals' merits need be referred to.

Format of the proofs and appendices:

- proofs to be no longer than 3000 words if possible. Where proofs are longer than 1500 words, summaries are to be submitted;
- proofs are to be spiral bound or bound in such a way as to be easily opened and read;
- front covers to proofs and appendices are to be clearly titled, with the name of the witness and relevant qualifications on the cover;
- both pages and paragraphs are to be numbered;
- appendices are to be bound separately; and
- appendices are to be indexed using **projecting tabs**, labelled and **paginated**.

Annex C

Applicant set out references in the Decision Notice of the planning permission should be:

- 6.7 whereby the relevant condition is 4
- 6.8.1 whereby the relevant condition is 13
- 6.8.2 whereby the relevant condition is 33
- 6.8.3 whereby the relevant condition is 30
- Also relevant will be conditions 6, 9, 40 and 42.

(More detail is set out in the Errata Sheet - PPIQ 007)